

84-07

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8 UNITED STATES  
9 ENVIRONMENTAL PROTECTION AGENCY  
10 REGION 9

11 In the Matter of )  
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13 OCCIDENTAL CHEMICAL ) CONSENT AGREEMENT  
14 AGRICULTURAL PRODUCTS, INC. ) AND  
15 (OCAPI), ) FINAL ORDER  
16 Respondent. ) Docket No. 84-07  
17 )  
18 PROCEEDING UNDER SECTION 7003(a) )  
19 OF THE RESOURCE CONSERVATION )  
20 AND RECOVERY ACT )  
21 (42 USC §6973) )

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INTRODUCTION

21 This Consent Order (Order) has been agreed to between the  
22 United States Environmental Protection Agency (EPA) and  
23 Occidental Chemical Agricultural Products, Inc. (OCAPI),  
24 pursuant to the authority of Section 7003 of the Solid Waste  
25 Disposal Act, as amended by the Resource Conservation and  
26 Recovery Act, as amended, (RCRA) 42 USC §6973, P.L. 94-580.  
27 Notice of issuance of this Order has been given to the State of  
28 Arizona.

1 OCAPI agrees to this Order to expedite remedial work at  
2 the site of its former Casa Grande retail agricultural facility  
3 without protracted administrative or judicial proceedings.  
4 Nothing in this Order is intended or shall be construed as an  
5 admission of any issue of law or fact on the part of OCAPI

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7 JURISDICTION

8 OCAPI and EPA admit and agree that the Regional Admin-  
9 istrator of EPA has jurisdiction of the subject matter of  
10 this Order and over the parties thereto, pursuant to Section  
11 7003 of RCRA (42 USC §6973) and 40 CFR 22.04(a) and 22.37.

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FACTS

1. OCAPI owned and operated a facility ("the facility") located at 447 West First Street, Casa Grande, Arizona, from about 1958 to March 11, 1983. On March 11, 1983, the facility was sold to the current owner/operator, Center Plains Industries Inc.

2. OCAPI blended and formulated pesticides at the facility from about 1958 until May 1, 1981. OCAPI was a "generator" as defined in 40 CFR §260.10, and formulated dichlorodiphenyltrichloroethane (DDT) from about 1958 to 1965 and toxaphene from about 1963 to 1980.

3. On August 18, 1980, OCAPI notified EPA, pursuant to §3010 of RCRA (42 USC §6930), of the following activities: generation, storage, and underground injection of hazardous waste. On February 3, 1981, OCAPI notified EPA of an error in interpretation of the term "underground injection". OCAPI stated that underground injection of hazardous waste was not occurring at the facility, and requested that this activity be deleted from the notification. As a result of this request, EPA deleted the reference to underground injection from OCAPI's notification of hazardous waste activities. In the notification, OCAPI reported that among the hazardous wastes generated were dimethoate, 0,0-diethyl S-[2(ethylthio) ethyl] phosphorodithioate, parathion, methyl parathion, and dinitrophenol.

4. On November 19, 1980, OCAPI submitted to EPA a Part A application pursuant to §3005 of RCRA, 42 USC §6925, thereby qualifying for Interim Status, as provided in §3005.

1        5. In 1981, OCAPI conducted an Environmental Audit which  
2 included a soil sampling and analysis survey at the facility.  
3 On November 25, 1981, OCAPI provided the results of  
4 the Environmental Audit to the Arizona Department of Health  
5 Services (ADHS). This information included analytical results  
6 of soil sampling conducted at certain locations on the facility  
7 where pesticide rinsing operations may have occurred.  
8 Analytical results of soil samples taken on May 20, 1981, from  
9 location "C" near the blending area revealed concentrations of  
10 toxaphene at 681 parts per million (ppm), and concentrations of  
11 DDT at 875 ppm at a depth of 5 feet. Analytical results of  
12 soil samples taken on May 20, 1981, from location "D" near the  
13 fertilizer warehouse revealed concentrations of DDT at 85 ppm  
14 and toxaphene at 49 ppm at a depth of one foot.

15        6. Based upon the aforementioned analytical results,  
16 OCAPI recommended additional sampling of the blending area to  
17 substantiate the findings and further define the extent of  
18 contamination. Analytical results from deeper soil samples  
19 taken on October 13, 1981 from location "C" near the blending  
20 area revealed concentrations of DDT up to 110 ppm and  
21 concentrations of toxaphene up to 64 ppm at a depth of 7 feet.  
22 At this time, soil sampling was not conducted at location "D"  
23 near the fertilizer warehouse. Samples were not collected in  
24 any areas below a depth of 7-1/2 feet due to the presence of a  
25 caliche layer.

26        7. On April 13, 1982, an inspection of the facility was  
27 conducted by EPA pursuant to §104(e) of CERCLA. A concurrent  
28 inspection of the facility was conducted by ADHS pursuant to

1 the Arizona Compendium of Rules and Regulations (ACRR)  
2 R9-8-1800 of the Arizona Hazardous Waste Regulations and  
3 §3007(a) of the Resource Conservation and Recovery Act (RCRA).  
4 The OCAPI Site Supervisor informed the EPA and ADHS  
5 representatives that soil contamination in the blending area  
6 occurred when workers rinsed pesticide mixing and safety  
7 equipment at the faucet adjacent to the blending area concrete  
8 pad. Subsequent information provided to EPA by the OCAPI  
9 Environmental Control Engineer indicates that the soil  
10 contamination present in a low area of the facility near the  
11 fertilizer warehouse resulted from facility drainage.

12 8. On April 20, 1982, ADHS reported the results of the  
13 inspection to OCAPI and requested evidence of compliance with  
14 certain requirements of 40 CFR, Part 265 within 35 days. On  
15 May 25, 1982, OCAPI requested withdrawal of the Casa Grande  
16 facility Part A Application and a change in the status of the  
17 facility to a generator of hazardous waste only. Based upon  
18 OCAPI's request for withdrawal of the Casa Grande facility  
19 Part A Application, EPA returned the Part A Application on  
20 June 7, 1982. On July 21, 1982 ADHS returned the Casa Grande  
21 Part A Application to OCAPI, and requested that certain  
22 deficiencies of the generator requirements noted in the  
23 April 13 inspection be corrected by submittal of evidence of  
24 compliance within 35 days.

25 9. On April 21, 1982, ADHS requested that OCAPI submit a  
26 proposal for the cleanup of the pesticide formulation/blending  
27 area at the facility, including further soil sampling and  
28 analysis. On July 30, 1982, OCAPI submitted a Phase 1 proposal

1 to ADHS and EPA for further soil sampling and analysis to  
2 determine the vertical and areal extent of contamination. The  
3 proposal stated that Phase II, which would address corrective  
4 actions, would be submitted upon receipt of analytical results  
5 from implementation of Phase I.

6 10. On October 13, 1982, after EPA and ADHS review, OCAPI  
7 conducted the Phase I soil sampling program at the facility in  
8 conjunction with representatives from ADHS and EPA. On  
9 January 11, 1983, OCAPI submitted a remedial project proposal  
10 for the facility which included results from the Phase I soil  
11 sampling program. Analytical results from soil samples taken  
12 from location "K" near the blending area revealed  
13 concentrations of DDT at 53 ppm and toxaphene at 46.9 ppm at a  
14 depth of 11 feet. At sample location "D" near the fertilizer  
15 warehouse, toxaphene was detected at 26 ppm and DDT at 29 ppm  
16 at a depth of 5 feet.

17 11. On February 1, 1983, the aforementioned remedial  
18 project proposal was evaluated by representatives from ADHS and  
19 EPA. Based upon data obtained from Phase I sampling, these  
20 representatives determined that the remedial project proposal  
21 did not adequately define the vertical extent of contamination  
22 below the caliche layer and the areal extent of contamination  
23 near the blending area. On March 21, 1983, ADHS requested that  
24 additional sampling be conducted to determine the areal and  
25 vertical extent of contamination. OCAPI subsequently met with  
26 ADHS to discuss these requests, and on April 18, 1983 submitted  
27 to ADHS a written summary of tasks to be performed.

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1 12. On August 22, 1983, ADHS requested that EPA Region 9  
2 assume the lead responsibility on the Casa Grande facility  
3 during the remainder of the clean up project.

4 13. On December 12, 1983, OCAPI submitted to EPA and ADHS  
5 a remedial project proposal (Proposal) which included results  
6 of further soil sampling and analysis conducted by OCAPI at the  
7 facility in August, 1983. As requested by ADHS and EPA, soil  
8 sampling was conducted by OCAPI in certain locations to a  
9 maximum depth of 25 feet. The Proposal recommends excavation  
10 of soils with contaminant concentrations exceeding 3 PPM in the  
11 areas defined by the aforementioned sampling and analytical  
12 projects. The proposed maximum depth of excavation is 22  
13 feet.

14 14. Based upon reviews of the Proposal conducted by ADHS,  
15 EPA, and local agencies, EPA advised OCAPI on February 3, 1984  
16 that its Proposal adequately addresses the vertical and  
17 horizontal extent of soil contamination. EPA requested that  
18 additional information be included in the Proposal.

19 15. On May 7, 1984, EPA received a remedial action  
20 proposal recommending excavation of hazardous wastes at the  
21 facility, and on subsequent dates EPA received amendments to  
22 the May 7 proposal.

23 16. EPA has reviewed and approved the Proposal, as  
24 amended, which is incorporated as a part of this Order and  
25 which is set out at Appendix A.

26 17. DDT and toxaphene are hazardous wastes as defined  
27 by §1004(5) of the Resource Conservation and Recovery Act  
28 (RCRA), 42 USC §6903(5).



1 18. Following an extensive review of the health and environ-  
2 mental hazards of DDT, EPA decided in 1972 to ban its further  
3 use in the United States. OCAPI ceased formulation of DDT by  
4 1965.

5 19. In November 1982, EPA announced the Administrator's  
6 intent to cancel the registrations of toxaphene for most uses  
7 and to deny certain applications for registration of toxaphene  
8 (47 Fed.Reg. 53784, November 29, 1982). OCAPI ceased formula-  
9 tion of toxaphene by 1980.

10 20. Although the OCAPI facility is fenced, the hazardous  
11 waste site within the facility is unfenced and accessible to  
12 current employees and other personnel entering the property.  
13 EPA has determined that soil contaminated with DDT and toxa-  
14 phene poses risks to human health and to the environment.

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1                                    CONCLUSIONS OF LAW

2            1. OCAPI is a "person" as defined in Section 1004(15) of  
3 RCRA (42 USC 6903(15)).

4            2. The site at 447 West First Street, Casa Grande, Ari-  
5 zona, is a "facility" under RCRA, as defined in 40 CFR §260.10.

6            3. Pesticides and pesticide rinse waters spilled at the  
7 facility by OCAPI include "hazardous wastes" as defined in  
8 Section 1004(5) of RCRA (42 USC §6903(5)) and "solid wastes" as  
9 defined in Section 1004(27) of RCRA (42 USC §6903(27)).

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11                                   DETERMINATIONS

12            Based on the FACTS and CONCLUSIONS OF LAW set out above,  
13 EPA has determined that:

14            1. The handling, storage, treatment, transportation or  
15 disposal of hazardous waste at the facility may present an immi-  
16 nent and substantial endangerment to health or the environment.

17            2. The remedial actions required and agreed upon in this  
18 Order are necessary to protect public health and the environ-  
19 ment.

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OCAPI agrees pursuant to §7003(a) of RCRA (42 USC 6973(a)) to implement the Remedial Proposal ("Proposal") incorporated as a part of this Order and set forth in Exhibit A. OCAPI shall initiate on-site work to implement the Proposal within 60 days of the effective date of this Order. OCAPI shall complete on-site excavation work in accordance with the Proposal within 30 days of commencement of on-site work. To the extent that events beyond the reasonable control of OCAPI occur which delay completion of the on-site work beyond this implementation schedule, such delay shall not be considered to be a violation of this order, provided that OCAPI notifies EPA of the delay within 72 hours and takes reasonable measures to minimize the delay. For purposes of this Order, circumstances beyond the reasonable control of OCAPI shall include, but not be limited to, acts of God, strikes, lockouts, breakage of machinery, accidents, unstable weather or wind conditions which prevent on-site work to proceed, orders by the OSR or other governmental officials to cease on-site work, and denial of access by the site owner.

All actions carried out by Occidental pursuant to this Order shall be done in accordance with all applicable Federal, State and local requirements, including requirements to obtain necessary permits and to assure personnel safety.

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1        III. Incorporation of Documents

2        The Remedial Proposal, as amended, which is set forth in  
3 Appendix A, is hereby incorporated as a part of this Order.

4        IV. Enforcement

5        This Order shall be enforceable pursuant to §7003(b) of  
6 RCRA (42 USC §6973(b)). Willful violation, or failure or  
7 refusal to comply with this Order may subject OCAPI to a fine  
8 of not more than \$5,000 per day. Nothing herein shall preclude  
9 EPA from taking such other actions as may be necessary to  
10 protect the public health and welfare or the environment  
11 and recovering the costs thereof.

12       V. Liability

13       Nothing herein shall constitute or be construed as a  
14 satisfaction or release from liability for any conditions  
15 or claims arising as a result of past, current or future  
16 operations at the facility, except that OCAPI shall not be  
17 required to excavate in areas in which OCAPI has completed  
18 excavation according to the Proposal after EPA has approved  
19 OCAPI's final report on implementation of the Proposal.  
20 Notwithstanding compliance with the terms of this Order,  
21 OCAPI may be required to take further actions as are necessary  
22 to protect public health or welfare or the environment.

23       VI. Performance

24       All response work shall be performed under the direct  
25 supervision of a qualified professional engineer or certified  
26 geologist with expertise and experience in hazardous waste  
27 site cleanup. OCAPI shall provide EPA with the name(s) of  
28 such engineer(s) or geologist(s) and of any contractors and

1 subcontractors to be used in carrying out the terms of this  
2 Order in advance of their involvement at the site.

3 VII. Reporting

4 At least 14 days prior to initiation of work to imple-  
5 ment the Proposal, OCAPI shall provide written notice to  
6 EPA of its intent to commence work. Within five (5) days  
7 of actual completion of on-site work, OCAPI shall provide  
8 EPA with written notice of final completion. Within 60  
9 days of completion of the activities specified in the Pro-  
10 posal, OCAPI shall submit to EPA for review and approval  
11 a final report.

12 VIII. Notifications

13 All correspondence pursuant to this Order shall be sent  
14 to:

15 For EPA:

16 Harry Seraydarian  
17 Director, Toxics & Waste Mgmt. Div. (T-1)  
18 EPA, Region 9  
215 Fremont Street  
San Francisco, CA 94105

19 For OCAPI:

20 John R. Nichter  
21 Operations Manager  
22 Special Environmental Programs  
Occidental Chemical Corporation  
360 Rainbow Boulevard South  
P.O. Box 728  
23 Niagara Falls, New York 14302

24 IX. Site Access

25 To the extent that OCAPI is lawfully able to do so, OCAPI  
26 shall provide access to the site to EPA employees and author-  
27 ized representatives at all reasonable times, and OCAPI shall  
28 permit such persons to be present on the site and to observe

1 any activities conducted pursuant to this Order. Any EPA  
2 employee or contractor desiring access shall notify the  
3 designated OCAPI representative upon arrival at the site.  
4 Nothing in this paragraph is intended to limit in any way  
5 the right of entry or inspection that EPA may otherwise  
6 have by operation of law.

7 X. On-Scene Representative

8 EPA shall appoint an On-Scene Representative or On-Scene  
9 Coordinator ("OSR"). The OSR shall have authority to be  
10 on-site at all times when response work is being undertaken  
11 pursuant to this Order, and shall have at least the authority  
12 to:

13 (1) take samples or arrange for the type, quantity,  
14 and location of samples to be taken by Occidental;

15 (2) direct that work stop for a period not to ex-  
16 ceed 72 hours whenever he/she determines that activities  
17 at the site may create an immediate and significant  
18 threat to public health or welfare or the environment;

19 (3) observe, take photographs of the remedial work,  
20 and make such other reports on the progress of the work  
21 as he/she deems appropriate;

22 (4) review records, files, and documents relevant to  
23 the Order;

24 (5) make or authorize minor field modifications in  
25 the studies, techniques, procedures or design utilized  
26 in carrying out this Order which are necessary to the  
27 completion of the project.

28 The absence of the OSR from the site shall not be cause

1 for stoppage of work. The OSR shall have the authority vested  
2 in the on-Scene Coordinator by 40 CFR §300 et. seq.

3 XI. Government Liabilities

4 The United States shall not be liable for any injuries  
5 or damages to persons or property resulting from acts or  
6 omissions by OCAPI, its employees, agents, or contractors  
7 in carrying out the activities pursuant to this Order, nor  
8 shall the Federal Government be held as a party to any con-  
9 tract entered into by OCAPI or its agents in carrying out  
10 activities pursuant to this Order.

11 XII. Parties Bound

12 This Order shall apply to and be binding upon EPA,  
13 Occidental Chemical Agricultural Products, Inc., its  
14 its officers, directors, agents, employees, contractors,  
15 parents, successors, and assigns.

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1        XIV. Effective Date

2        This Order shall become effective when it has been signed  
3 by both parties and the Regional Administrator.

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6        \_\_\_\_\_  
Date                      Occidental Chemical Agricultural  
                                 Products, Inc.

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Date                      Harry Seraydarian  
                                 Director, Toxics & Waste Management  
11                                   Division  
12                                   EPA Region 9

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14        It is HEREBY ORDERED that this Consent Agreement and  
15 Final Order (Docket No. 84-07) shall be entered and shall  
16 become effective immediately.

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19       \_\_\_\_\_  
Date                      Judith E. Ayres  
20                                   Regional Administrator  
21                                   EPA Region 9